

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint alleging that Defendant, Stone Container Corporation ("Stone" or "Defendant"), violated the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 *et seq.*, the regulations promulgated thereunder, and the requirements established in the Commonwealth of Virginia's State Implementation Plan ("Virginia SIP"), 40 C.F.R. §§ 52.2420-2465, that were developed pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410(a), at the kraft pulp and paper mill located in Hopewell, Virginia (the "Hopewell Mill" or the "Facility");

WHEREAS, Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality ("VDEQ"), has filed a Complaint in Intervention alleging that Stone violated the Virginia Air Pollution Control Law, Code of Virginia § 10.1-1300, *et seq.* the Virginia SIP, and the Virginia Administrative Code, 9 VAC 5-10 *et seq.*;

WHEREAS, Stone is the current owner and operator of the Hopewell Mill and is the appropriate corporate entity to address any alleged violations with respect to it;

WHEREAS, the Defendant neither admits nor denies the violations alleged in the Complaints;

WHEREAS, the parties have agreed that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is appropriate;

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith and will avoid prolonged and complicated litigation between the parties;

WHEREAS, Stone has taken actions to remedy alleged violations described in the

Complaints;

WHEREAS, the United States, VDEQ, and the Defendant have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, without any admission of fact or law, without any taking of testimony, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaints state claims upon which relief can be granted against the Defendant under Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and Section 10.1-1316 of the Air Pollution Control Law of Virginia. The court has jurisdiction of the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) and 1367, and pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Venue is proper under 28 U.S.C. § 1391(c) and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the United States, VDEQ, Stone, and Stone's successors, assigns and transferees.

III. FACTUAL BACKGROUND

3. Stone currently owns and operates the Hopewell Mill which manufactures various paper products including, but not limited to, unbleached kraft linerboard along with intermediate products and byproducts.
4. The integrated kraft pulping and papermaking processes at the Hopewell Mill result in emissions of air pollutants, including, but not limited to, particulate matter ("PM-10"),

sulfur dioxide ("SO₂"), nitrogen oxides ("NO_x"), carbon monoxide ("CO") and total reduced sulfur compounds ("TRS").

5. On March 4 and 5, 1997, representatives of EPA and VDEQ conducted an inspection of the Hopewell Mill. Subsequently, in a series of letters dated April 2, April 3, April 14, and April 17, 1997, Stone submitted information that had been requested by the EPA representatives during the inspection. On June 12, 1997, EPA requested further information pursuant to CAA § 114, directing Stone to submit information concerning air emissions and compliance with the New Source Performance Standards ("NSPS") and other regulations at the Hopewell Mill. In letters dated July 8, July 14, and July 22, 1997, Stone responded to EPA's CAA § 114 information request. On September 5, 1997, EPA issued a Notice of Violation ("NOV") and Administrative Compliance Order ("ACO") to Stone, alleging certain violations of the NSPS and other regulations at the Hopewell Mill and directing Stone to take measures to come into compliance.
6. On December 5, 1997 and November 12, 1998, EPA requested additional information from Stone pursuant to CAA § 114, to which Stone responded by letters dated December 22, 1997, January 28, 1998, and January 29, 1999. Also, on July 13 and 14, 1998, EPA representatives conducted a further inspection of the Hopewell Mill and gathered additional information for the purpose of assessing Stone's compliance with the CAA. On April 19, 1999, EPA issued an NOV to Stone, alleging certain violations of the CAA's Prevention of Significant Deterioration ("PSD") requirements. The VDEQ issued a similar NOV on May 24, 1999.

7. EPA and VDEQ agree that Stone has taken actions to address violations alleged in the Complaints.

IV. DEFINITIONS

8. Unless otherwise explicitly defined herein, terms used in this Decree shall have the meaning given to those terms in the Clean Air Act, 42 U.S.C. § 7401, et seq. In addition, whenever terms listed below are used in this Consent Decree, the following definitions apply:

- A. "Agencies" shall mean EPA and VDEQ.
- B. "Consent Decree" or "Decree" shall mean this Consent Decree and any Appendices thereto.
- C. "Date of Entry of the Consent Decree" shall mean the date the Consent Decree is approved and signed by the United States District Court Judge assigned to handle this matter.
- D. "Date of Lodging of the Consent Decree" shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Eastern District of Virginia, Richmond Division.
- E. "Day" or "Days" as used herein shall mean a calendar day or days unless expressly stated to be a business day. "Business Day" shall mean a day other than a Saturday, a Sunday, or a holiday recognized by the United States or VDEQ. In computing any period of time where Defendant is required to make a written submission under this Consent Decree, where the last day for any such submission would fall on a Saturday, a Sunday, or a holiday recognized by the United States or VDEQ, the period shall run until the close of business of the next business day.
- F. "Defendant," "Stone Container Corporation" and/or "Stone" means Stone Container

Corporation, a Delaware Corporation with offices and a primary business address of 150 N. Michigan Avenue, Chicago, Illinois 60601.

G. "DOJ" means the U.S. Department of Justice.

H. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

I. "Facility" or "Hopewell Mill" shall mean the 150-acre pulp and paper mill located at 910 Industrial Street, Hopewell, Virginia, that produces unbleached linerboard made from virgin pulp and recycled fiber and which is owned and operated by the Stone Container Corporation.

J. "Parties" shall mean the United States, VDEQ, and Defendant.

K. "Plaintiffs" shall mean the United States, on behalf of EPA, and Robert G. Burnley, Director, Commonwealth of Virginia Department of Environmental Quality, on behalf of VDEQ.

L. "Pollutant," as used herein, shall refer generally to any one or more of the following: particulate matter, sulfur dioxide, nitrogen oxide and carbon monoxide.

M. "United States" shall mean the United States of America, including but not limited to the DOJ and EPA.

N. "VDEQ" shall mean the Virginia Department of Environmental Quality.

V. CIVIL PENALTY

9. Within twenty (20) Days of the entry of this Consent Decree, Defendant shall pay to the United States and VDEQ a total civil penalty in the amount of Eight Hundred Thirty-five Thousand Dollars (\$835,000.00). Of that total, Five Hundred One Thousand Dollars (\$501,000.00) shall be paid to the United States Treasury and Three Hundred Thirty-four Thousand Dollars (\$334,000.00) shall be paid to VDEQ.
10. The monies due to the United States shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number 1997V26600 and DOJ Case Number 90-5-2-1-2213, and the civil action case name and case number of the Eastern District of Virginia, Richmond Division. The costs of such EFT shall be the responsibility of Stone. Payment shall be made in accordance with instructions provided to Stone by the U.S. Attorney's Office in the Eastern District of Virginia, Norfolk Division. Any funds received after 11:00 a.m. ("EST") shall be credited on the next business day. Stone shall provide written notice of payment, referencing the USAO File Number 1997V26600 and DOJ Case Number 90-5-2-1-2213, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 22 ("Notice").
11. The monies due to VDEQ shall be paid in the form of a certified check or cashier's check, and be payable to "The Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
P.O. Box 10150
Richmond, VA 23240

The payment shall include Stone Container Corporation's Federal ID number and the Hopewell Mill's State Registration Number, and shall state that it is being tendered in payment of the civil penalty agreed to under this Consent Decree. The check must reference *United States of America, et al. v. Stone Container Corporation*, and the civil action case number. Stone shall provide written notice of payment to VDEQ as provided in Paragraph 22 ("Notice").

12. Upon entry of this Decree, this Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States and VDEQ shall be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.
13. Neither the civil penalty required by this Section V, nor any interest or penalties thereon for late payment, shall be deducted or otherwise relied upon by the Defendant for a tax benefit for federal, state, or local tax purposes.

VI. CONSENT DECREE ENFORCEMENT

14. Except as provided in Paragraph 15, Defendant shall be subject to any other remedies, in addition to stipulated penalties and interest, available to Plaintiffs for Defendant's failure to comply with any provisions of this Consent Decree and any other applicable federal, state,

and local laws.

VII. EFFECT OF SETTLEMENT

15. This Consent Decree represents full and final settlement of and resolves Defendant's civil liability to the United States and VDEQ, through the date of lodging of this Consent Decree, for the violations alleged in the Complaints filed in this proceeding by the United States and VDEQ.
16. This Consent Decree is neither a permit nor a modification of any existing permit and shall not be interpreted to be such. Compliance with the terms of this Consent Decree does not guarantee compliance with any applicable federal, state or local laws or regulations. Nothing in this Consent Decree shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

VIII. GENERAL PROVISIONS

17. Except as provided in Paragraph 15, nothing in this Consent Decree shall be construed to:
 - (a) prevent or limit the application of the provisions of the CAA, 42 U.S.C. §§ 7401, *et seq.*, or the State Air Pollution Control Law, § 10.1-1300, *et seq.*, of the Code of Virginia to the Defendant or to the Facility; (b) relieve the Defendant of its obligation to comply with all applicable federal, state and local laws and regulations; or (c) be construed to prevent, alter or limit the rights of the United States, or of VDEQ, to seek or obtain other remedies or sanctions, available under other federal, state or local statutes or regulations, against the Defendant for the Defendant's violation of this Consent Decree or of any applicable federal, state and/or local laws and regulations, including the right of the United States, and of

VDEQ, to institute proceedings for civil or criminal contempt, to seek injunctive relief, and/or to pursue such remedies as otherwise are available to Plaintiffs in the event of Defendant's violation of this Consent Decree or of any provision of applicable law.

18. Except as otherwise expressly provided in this Decree, the Parties reserve all of their rights, claims, and defenses at law and in equity. Nothing in this Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Defendant, if any, or to waive or limit any rights or defenses the Defendants may have in any criminal proceeding.
19. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.
20. Each party to this action shall bear its own costs and attorneys' fees. However, if Defendant fails to pay any amount that is owing to the United States or VDEQ pursuant to the requirements of this Consent Decree and in accordance with the time periods set forth in this Decree, Defendant shall be liable and shall pay for attorneys' fees and costs incurred by the United States and/or VDEQ to collect any such amount.
21. Final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. Upon execution by the parties, this Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing the public comments, if

any, the United States shall advise the Court by motion, served on Defendant, whether it seeks entry of this Consent Decree. Defendant agrees to the entry of this Consent Decree as originally lodged without further notice and shall not withdraw such consent after the Consent Decree is lodged with the Court, provided, however, that if the United States withdraws its consent pursuant to 28 C.F.R. § 50.7, this Consent Decree shall bind neither Defendant nor Plaintiffs.

22. Notice. Unless otherwise provided herein, written Submissions or notifications to VDEQ, EPA and/or the United States, or written communications with Stone, shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. When Stone is required to submit any written Submission under this Consent Decree to VDEQ it shall also submit a copy of that written Submission to the United States. Except as otherwise provided herein, when Defendant is required to submit any written Submission, notification or communication to VDEQ, the United States and/or EPA pursuant to any requirement or provision of this Consent Decree, it shall be addressed as follows:

As to the United States and DOJ:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ No. 90-5-2-1-06526

United States Attorney
ATTN: Civil Chief
Eastern District of Virginia
Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314

As to the United States and EPA:

Chris Pilla, Branch Chief
Air Enforcement Branch
Air Protection Division (3AP12)
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

A.J. D'Angelo
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

As to VDEQ:

Director
Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia 23060

Michael G. Dowd
Air Enforcement Manager
Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

Carl Josephson
Assistant Attorney General
Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219

Written communications with the Defendant will be addressed, by the Plaintiffs, as follows:

Mr. Charles Bogatie
General Manager
Stone Container Corporation
910 Industrial Drive
Hopewell, Virginia 23860

Roy C. Cobb, Jr., Esquire
Senior Environmental Counsel
Smurfit-Stone Container Corporation
8182 Maryland Avenue
Clayton, Missouri 63105

23. This Consent Decree shall be binding upon all Parties to this action, and to the Defendant's successors, transferees and assigns. Each undersigned representative of Defendant certifies that he or she is duly authorized to enter into the terms and bind Defendant to them.
24. Any modification of this Consent Decree must be in writing and approved by the Court.
Any agreed upon written modification, before or after entry, must be signed by the Parties to this Consent Decree.
25. This Consent Decree constitutes the entire agreement and settlement between the Parties. It may be signed in multiple counterparts.

IX. TERMINATION

26. This Consent Decree shall terminate thirty (30) days after the payment of the civil penalties specified in Section V ("Civil Penalty").

So entered in accordance with the foregoing this _____ day of _____, 2004.

United States District Court Judge
Eastern District of Virginia
Richmond Division

FOR PLAINTIFF, UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

Date: 7/28/04

WILLIAM A. HUTCHINS
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 514-2717 (telephone)
(202) 616-6583 (telefax)

Date: _____

RICHARD W. SPONSELLER (VSB 39402)
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: 703/299-3700
Fax: 703/299-3983

Date: _____

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

THOMAS V. SKINNER
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date: _____

Date: _____

DONALD S. WELSH

Regional Administrator

U.S. Environmental Protection Agency, Region III

1650 Arch Street

Philadelphia, PA 19103-2029

Date: _____

WILLIAM C. EARLY

Regional Counsel

U.S. Environmental Protection Agency, Region III

1650 Arch Street

Philadelphia, PA 19103

Date: _____

A.J. D'ANGELO

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency, Region III

1650 Arch Street

Philadelphia, PA 19103

FOR PLAINTIFF-INTERVENOR the VDEQ:

Date: _____
ROBERT G. BURNLEY
Director
Department of Environmental Quality
P.O. Box 10009
Richmond, Virginia 23240-0009

COUNSEL FOR PLAINTIFF-INTERVENOR the VDEQ:

Date: _____
CARL JOSEPHSON
Assistant Attorney General
Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219

FOR STONE CONTAINER CORPORATION

By: _____ Date: _____
CHARLES F. BOGATIE
Its: General Manager
910 Industrial Drive
Hopewell, Va 23860